

INTERLOCAL AGREEMENT
(HB 2060 – Low Income Housing)

This Interlocal Agreement (HB 2060 – Low Income Housing) (this “Agreement”) is entered into this ____ day of _____, 2003, between the HOUSING AUTHORITY OF THE CITY OF VANCOUVER (the “Authority”) and CLARK COUNTY, WASHINGTON (the “County”).

RECITALS

A. Pursuant to RCW 36.22.178, the County is required to deposit a portion of the revenue generated from a ten dollar surcharge collected by the County Auditor with respect to recorded documents into a fund (the “County Housing Fund”) to be used by the County and the cities within the County to provide housing units affordable to very low-income persons; and

B. RCW 36.22.178 further provides that the surcharge revenue deposited in the County Housing Fund must be allocated to very low-income housing projects or units within such housing projects in the County and the Cities according to an interlocal agreement between the County and the Cities, consistent with countywide and local housing needs and policies; and

C. The County and the Cities of Battle Ground, Camas, LaCenter, Ridgefield, Vancouver, Washougal and Woodland, and the Town of Yacolt, Washington (collectively, the “Cities”) have entered into an interlocal agreement (the “County-City Agreement”) providing for the allocation of the surcharge revenue deposited in the County Housing Fund; and

D. The County-City Agreement provides that approximately one-third (\$250,000) of the surcharge revenue collected each year for deposit into the County Housing Fund shall be used to pay debt service on a bond (the “Bond”), to be issued for the purpose of acquiring housing projects or land for future housing projects for very low-income persons consistent with RCW 36.22.178; and

E. The Authority is authorized to exercise its powers as a housing authority under chapter 35.82 RCW within the boundaries of the Cities and the County; and

F. The County has requested the Authority’s assistance with respect to the acquisition and lease or sale to eligible nonprofit corporations of the housing projects and land to be acquired with the proceeds of the Bond; and

G. The parties wish to enter into this interlocal agreement pursuant to chapter 39.34 RCW and RCW 36.22.178 with respect to the issuance of the Bond and the use of the proceeds of the Bond.

AGREEMENT

Section 1. Definitions. Capitalized terms used in this agreement shall have the meanings set forth in this Section 1.

“Authority” means the Housing Authority of the City of Vancouver.

“Authority Administrative Allowance” means an amount necessary to reimburse the Authority for the reasonable costs of its staff time and other expenses incurred in connection with the acquisition of Property; provided that the Authority Administrative Allowance shall not exceed 5% of the Net Proceeds of the Bond.

“Bank Fees” means the periodic fees, if any, of a depository bank, if one is appointed by the County in accordance with Section 2.

“Bond” means the limited tax general obligation bond(s) to be issued by the County as described in Section 2 of this Agreement.

“Bond Counsel” means the law firm of Foster Pepper & Shefelman PLLC, or other firm of lawyers nationally recognized and accepted as bond counsel and so employed by the County.

“Capital Fund” means the fund established pursuant to Section 2 of this Agreement into which the Net Proceeds of the Bond will be deposited.

“CHRB” means the Clark County Housing Review Board previously established by the Board of County Commissioners of the County.

“Costs of Issuance” means all reasonable costs incurred by the County in connection with the issuance of the Bond, including but not limited to bank or underwriter fees and expenses, Bond Counsel and other legal fees, financial advisor fees, initial fees of a depository bank, if one is appointed, County staff time and expenses; provided that the total amount of such issuance costs paid from proceeds of the Bond shall not exceed 2% of the aggregate principal amount of the Bond.

“County” means Clark County, Washington.

“County Housing Fund” means the fund established by the County Treasurer pursuant to RCW 36.22.178(1) and into which shall be deposited the County’s Portion of the Surcharge Revenue.

“County’s Portion of the Surcharge Revenue” means an amount equal to 60 percent of the revenue collected by the County (after deducting the administrative fee of up to 5%) from the ten dollar recording fee surcharge collected by the County Auditor under RCW 36.22.178(1).

“Net Bond Proceeds” means the proceeds of the Bond (or, if the Bond is issued as a line of credit, the available principal amount of the Bond) remaining after paying Costs of Issuance, together with investment earnings, if any, thereon.

“Nonprofit Corporation” means a Washington nonprofit corporation that is a tax-exempt organization described under Section 501(c)(3) of the Internal Revenue Code of 1986.

“Property” means any parcel of land or land and improvements (if the land is improved) acquired with money in the Capital Fund.

“Qualified User” means the Authority or any Nonprofit Corporation.

“Qualified Project” means a housing project serving Very Low-Income Persons, for a minimum of 30 years or such longer period as may be required under RCW 36.22.178 or by other funding sources for a particular Property.

“Surcharge Revenue Available for Debt Service” means, from the County’s Portion of the Surcharge Revenue, an amount equal to \$250,000 per year, less Bank Fees, if any.

“Transaction Costs” means the reasonable costs incurred by the Authority (excluding costs included in the Authority Administrative Allowance) in connection with the acquisition of Property, including but not limited to legal fees and expenses, brokerage and appraisal fees, title reports, environmental and other feasibility studies, settlement expenses, and other similar costs.

“Use Agreement” shall mean a lease, purchase agreement or other transfer or use agreement with respect to a Property.

“Very Low-Income Persons” means persons with incomes at or below 50% of the median income.

Section 2. Financing of Capital Fund. The County will issue its limited tax general obligation bond (the “Bond”) in a principal amount of up to **\$2,000,000**, with the exact amount to be determined at the time of issuance of the Bond based upon the amount of debt that can be repaid with the Surcharge Revenue Available for Debt Service. The principal of and interest on the Bond, together with Bank Fees, if any, due and payable in any year shall not exceed \$250,000, and the Bond shall have a maturity of not longer than 10 years. The Bond may be issued as a fixed rate or adjustable rate, taxable or tax-exempt single bond, line of credit, or other form of obligation, all under such terms and conditions as may be determined by the County, after consulting with the Authority. All of the Net Proceeds of the Bond will be deposited in a special fund or account of the County (the “Capital Fund”) to be held by a depository bank selected by the County, after consulting with the Authority. Notwithstanding the foregoing, if the Bond is issued in the form of a line of credit, the proceeds of each loan draw will be spent on the date of such draw and no Bond proceeds will be deposited in the Capital Fund.

Section 3. Use of Net Proceeds of the Bond. The Net Proceeds of the Bond shall be used solely for the purposes and in the manner described in this Section 3.

(a) Acquisition of Property. The Net Proceeds of the Bond will be used by the Authority to pay costs of acquiring Property, including Transaction Costs, to serve Very Low-Income Persons, and to pay the Authority Administrative Allowance.

(b) Selection of Property. The Authority shall select the Property to be acquired with the Net Proceeds of the Bond in accordance with the guidelines established by the Authority and approved by the County, after review by the CHRB.

(c) Transfer to Qualified Users. The Authority will initially own the Property acquired with the Bond proceeds and will make such Property available for use under a Use Agreement by Qualified Users for Qualified Projects. The Authority will notify the CHRB of the availability of Property for use by Qualified Users, and the CHRB will designate the highest priority Qualified User for each available site in accordance with the guidelines and policies developed by the CHRB. Upon written notification by the CHRB that a Qualified User has been identified for a particular Property, the Authority will negotiate in good faith with that Qualified User the terms of a Use Agreement with respect to the Property for a Qualified Project. Any lease payments, sale proceeds or other compensation received by the Authority under a Use Agreement with respect to any Property shall be deposited in a separate account within the Capital Fund and used for the purposes described in this Section 3.

(d) Terms of Use Agreement; Deed Restrictions; Right of First Refusal. The Authority, in consultation with the County and the CHRB shall develop a form or forms of Use Agreement. The terms of the Use Agreement may include time limits for completion of the project to be constructed on the Property, and shall include other restrictions on the use of the Property as determined by the Authority, in consultation with the County and Bond Counsel, as may be necessary to maintain the tax-exempt status (if applicable) of the Bond, and to comply with RCW 36.22.178 and other applicable state laws. All Property acquired with the Bond proceeds will be subject to deed restrictions limiting the use of that land to Qualified Projects. The Authority also may retain a right of first refusal to acquire the Property to cure a default.

(e) Expenditure Bond Proceeds. The Bond proceeds shall be spent only for the purposes described herein and shall be fully spent within three years from the date of issue of the Bond. The Authority shall fully cooperate with the County in ensuring compliance with any other restrictions with respect to the use of the Bond proceeds as may be required by Bond Counsel.

(f) Reporting; Compliance. The Authority shall deliver a report at least annually during the term of this Agreement to the Board of County Commissioners and the CHRB describing the balances in the Capital Fund and the purposes for which the money in the Capital Fund has been spent. The Authority also will conduct an annual compliance review with respect to each Property.

Section 4. Term of Agreement; Extension; Termination. This Agreement shall expire on December 31, 2013, or upon earlier maturity of payment in full of the Bonds. This Agreement may be extended upon the expiration of the term upon mutual agreement of the Parties. This Agreement may be terminated prior to the expiration of the term (i) upon mutual agreement of the Parties, in which event the termination shall be effective at any time established by mutual agreement, or (ii) on a date not earlier than 90 days after receipt of written notice by one Party that the other Party intends to terminate. Upon termination of this Agreement, any unspent proceeds of the Bond (or remaining capacity if the Bond is a line of credit) and any other money in the Capital Fund shall be returned to County, to be used by the County for purposes consistent with RCW 36.22.178 and the County-City Agreement, as they both may be amended.

Section 5. Notices. Any and all notices or communications required or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been given upon receipt when personally delivered or sent by overnight courier or when such delivery is refused or upon receipt if sent by facsimile with hard copy in two (2) days or two (2) days after deposit in the United States mail if sent by first class, certified or registered mail, return receipt requested. All notices shall be addressed to the parties at the addresses set forth below or at such other address as any Party may specify by notice to the other Parties.

To the County:

John Payne, Deputy Treasurer
Clark County
1300 Franklin Street
P.O. Box 5000
Vancouver, WA 98666-5000
Telephone: 360-397-2255
Facsimile: 360-397-6042

And

Mike Piper, Director of Community Services
P.O. Box 5000
Vancouver, WA 98666-5000
Telephone: 360-397-2130
Facsimile: 360-397-6038

To the Authority:

Diane Stites, Chief Operations Officer
Vancouver Housing Authority
2500 Main Street, Suite 220
Vancouver, WA 98660
Telephone: 360-993-9550
Facsimile: 360-694-8369

Section 6. Dispute Resolution.

(a) The County and the Authority shall use their best efforts to resolve differences at an early stage.

(b) If the appropriate County and Authority staff cannot resolve any difference within one week, the dispute shall be referred to a committee consisting of one senior management official of each party.

(c) If the committee cannot resolve any difference within two weeks of referral, the parties shall attempt to resolve the difference by mediation. Unless otherwise agreed to, the mediator shall be an attorney or finance professional with at least 10 years experience working with local governments. The results of the mediation shall not be binding on either party unless consented to in writing by both parties. If the parties cannot resolve any difference within 30 days of mediation, the parties agree that the venue for any action shall lie in the Superior Court of the State of Washington in and for the County of Clark.

Section 7. Indemnification of County.

(a) The Authority covenants and agrees, at its expense, to pay and to indemnify and hold the County and its commissioners, officers, agents and employees harmless of, from and against any and all claims, damages, demands, expenses, liabilities and taxes of any character or nature whatsoever relating to the Authority's use of the Bond proceeds or the Property acquired with Bond proceeds in a manner not consistent with this Agreement or with RCW 36.22.178.

(b) The Authority further covenants and agrees, at its expense, to pay and to indemnify and hold the County and its commissioners, officers, agents and employees harmless of, from and against all fees, costs, reasonable counsel fees, expenses and liabilities incurred in any action or proceeding brought by reason of any claim or demand described in Section 7(a). In the event that any action or proceeding is brought against the County or its commissioners, officers, agents or employees by reason of any such claim or demand, the Partnership, upon notice from the County, covenants and agrees to resist and defend such action or proceeding on behalf of the County or its commissioners, directors, officers, agents or employees; provided that this covenant shall be subject to the provisions of Section 7(c).

(c) The Authority shall not be obligated to indemnify the County or its commissioners, officers, agents or employees in the circumstances described in Sections 7(a) and 7(b) against liability for damages caused by the County's negligence or willful and malicious acts.

(d) The provisions of this Section 7 shall, to the extent permitted by law, survive termination of this Agreement.

Section 8. Entire Agreement/Modification. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior

negotiations or discussions with respect thereto. This Agreement may be amended or modified by written instrument signed by the parties hereto.

Section 9. Assignment. No party to this Agreement may assign its rights or obligations hereunder.

Section 10. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original but all of which taken together shall constitute but one and the same instrument.

Section 11. Authorization. Each party does hereby represent and warrant to the others that it is duly authorized to enter into and to carry out the terms of this Agreement.

Section 12. Filing with County Auditor; Term of Agreement. This Agreement shall be effective upon its filing with the County Auditor pursuant to RCW 39.34.040.

Section 13. Prior Agreements Superseded. To the extent any of the provisions of the Prior Agreements conflict with the provisions of this Agreement, including the provisions of the documents incorporated herein by reference, the provisions of this Agreement shall control.

Section 14. Miscellaneous.

(a) This Agreement and each provision hereof may be amended, changed, waived, discharged or terminated only by an instrument in writing signed by the parties hereto.

(b) Section headings have been inserted in this Agreement only as a matter of convenience of reference, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provisions of this Agreement.

(c) If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions, because it conflicts with any provisions of any constitution, statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provisions in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

(d) This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

(e) This Agreement shall be interpreted and construed under the provisions of the laws of the State of Washington.

Dated as of the date set forth above.

HOUSING AUTHORITY OF THE CITY OF
VANCOUVER, WASHINGTON

By: _____
Chair, Board of Commissioners

CLARK COUNTY, WASHINGTON

By: _____
Chair, Board of County Commissioners

Approved as to Form:

By: _____
Deputy Prosecuting Attorney
Clark County, Washington